



METALLIC MINERAL MINING OPERATIONS SURFACE USE LEASE

No. L-9742
DRAFT

MICHIGAN DEPARTMENT OF NATURAL RESOURCES
FOREST, MINERAL, AND FIRE MANAGEMENT

By authority of Part 5, Act 451 of 1994, as amended.

This Lease, made and entered into this _____ day of _____ in the year 2007,

By and Between the DIRECTOR OF THE DEPARTMENT OF NATURAL RESOURCES (Lessor) for the STATE OF MICHIGAN, hereafter called "Lessor", whose address is P. O. Box 30452, Lansing, Michigan 48909-7952 and KENNECOTT EAGLE MINERALS COMPANY, whose address is 1004 Harbor Hill Drive, Suite 103, Marquette, MI 49855, hereafter called "Lessee".

Whereas, pursuant to Section 503(1) Part 5, of the Natural Resource and Environmental Protection Act, 1994 PA 451 (NREPA), as amended., MCL 324.503(1), the Lessor is required to: protect and conserve the natural resources of the State; provide and develop facilities for outdoor recreation; prevent the destruction of timber and other forest growth by fire or otherwise; promote the reforestation of forest lands belonging to the State; prevent and guard against the pollution of lakes and streams within the State and enforce all laws provided for that purpose with all authority granted by law; and foster and encourage the protecting and propagation of game and fish.

Whereas, the purpose of this lease is to provide a location for the development, operation, and maintenance of a surface site for a metallic mineral mining operation by the Lessee. The Lessor is allowed to lease lands for such purpose as authorized under Section 503(2) of the NREPA, MCL 324.503(2). The Lessee's development of State owned minerals within the mining unit is authorized under State Metallic Mineral Leases No. 00602 and No. 00603.

Whereas, the Lessor has determined that the purpose of this Lease is necessary to implement the NREPA because the utilization of the State's surface for the stated purpose will protect and conserve the natural resources of the State. The mining operation location will protect other surface resources within the mining unit and the revenue derived from the State owned minerals within the mining unit will benefit the Lessor through the Michigan Natural Resources Trust Fund programs.

Therefore, Lessor and Lessee, for the valuable consideration specified in this Lease, agree to the following terms and conditions:

MARQUETTE COUNTY
Michigamme Township
T50N, R29W

Parcels

Description	Section
N1/2 of NW1/4 and SW1/4 of NW1/4	12

Stipulations and Conditions

1. DESCRIPTION OF PREMISES:

Lessor hereby leases to Lessee the described Parcels (the Premises), as shown in Exhibit A *{to be provided}*.

2. TITLE:

Lessee acknowledges that (a) Lessor makes no warranty of title with respect to the Premises; (b) Lessee has had the opportunity to make its own assessment to such title; and (c) Lessee waives any claim against Lessor for inadequate or defective title to the Premises.

3. LEASE ADMINISTRATION:

Lessor's Unit Manager, William Brondyke, Gwinn Management Unit, 410 West M-35, Gwinn, MI 49841 is the Lease Administrator (Lessor's Representative) as pertains to the terms and conditions of the Lease as well as compliance with the terms and conditions of the Lease.

Lessee shall designate in writing to the Lessor's Representative, one person, and one alternate, responsible to be the contact person for Lessor regarding operations under the Lease. This person and alternate shall be authorized to make decisions regarding the maintenance and operation of the Premises for the Lessee.

4. USE OF PREMISES:

A. Lessee hereby acknowledges that the use and occupancy of the Premises shall be subject to the provisions of the NREPA, and confined to the following specific uses:

1. To construct, install, operate, and maintain a metallic mineral mining facilities site for a metallic mineral mine operated by the Lessee. This includes installations necessary for operation of the mine, as shown in the metallic mineral mining and reclamation plan as approved by the Lessor's representative and in the Department of Environmental Quality (DEQ) approved mining permit. A depiction of the facilities is contained in the attached Metallic Minerals Mining Operation Facilities Site Plan, Exhibit C.
2. Clearing of the Premises for the uses specified in subparagraph (1) above except for vegetation along and outside the location of the fence line shown on the Site Plan and the protections afforded to the rock outcrop in the Mining Permit and the Mining and Reclamation Plan.
3. To develop, improve, maintain, and use the Lessor approved access road.

4. To restore the Premises and surface to the specifications set forth in Exhibit B and Paragraph 14.

Lessee shall obtain Lessor's prior consent, in writing signed by the Lessor's Representative, to use the Premises for any purpose not listed above in A. 1 through 3. Lessor may terminate this Lease if, at any time, Lessee uses the Premises, without express written permission by Lessor, for purposes other than those enumerated in A. 1 through 3. This paragraph is cross-referenced in Paragraph 24. The following activities are specifically prohibited:

B. PROHIBITED ACTIVITIES:

1. Blocking of access roads outside the Premises unless such blockage is further approved in writing by the Lessor's Representative.
2. Any clearing activity on State land outside the Premises.
3. Any damage to archaeological sites.
4. Dumping or disposal of garbage, trash, spare parts, scrap metal, and other debris onto the Premises or other State land.
5. Disposal of trees, treetops, branches, roots, stumps, and other vegetation debris onto the Premises or other State land.
6. Placement of utilities on State land, unless further authorized by separate easement from Lessor.

Lessor may terminate this Lease if, at any time during the term of this Lease, prohibited activities occur on the Premises. This Paragraph is cross-referenced in Paragraph 24.

5. WASTE/NUISANCE:

Lessee agrees not to commit, or allow to be committed, waste or nuisance on the Premises and will not use, or permit to be used, the Premises for an unlawful purpose. Lessee is responsible for all costs and expenses that may be payable or incurred in the use of the Premises in compliance with this Lease.

6. LESSOR'S OPERATIONS:

Lessee covenants that its use of the Premises shall, at no time, interfere with the operations of Lessor or its use, or the Public's use, of State land adjacent to the Premises.

7. CONDITION OF PREMISES:

Lessee stipulates, represents and warrants that Lessee has examined the Premises, and that they are at the time of this Lease in good order, repair, and in a safe, clean, and tenantable condition. Lessee represents that it is taking possession of the Premises in their "as is" condition. Lessee has made an independent environmental assessment of the Premises and has provided a copy of the environmental assessment to the Lessor's Representative. Lessee agrees to maintain the Premises in good order, repair, and in a safe and clean condition throughout the life of the Lease.

8. TERM:

Lessor shall furnish the Premises to Lessee for an initial term equal to that of Metallic Minerals Lease Number M-00602. If that lease is terminated or expires prior to completion of the mining operation and reclamation activities as provided for under the approved mining and reclamation plan, this surface use lease shall continue in force to the end date of the mine closure and reclamation activities. The Lessor will determine the date when such mine closure and reclamation work has been successfully completed by the Lessee.

9. TIMBER CONSIDERATION FEE AND MONITORING FEE:

Lessee shall pay prior to commencement of clearing operations, the standard timber consideration fee for the area to be cleared and utilized on the Premises. The standard timber consideration fee rate for the Upper Peninsula is \$1722.00 per acre.

Lessee shall pay a yearly lease monitoring fee to the Lessor to cover Lessor's costs of monitoring the mining operation to insure terms and conditions of the Lease are met. For the first five years of the lease, the fee will be \$4,000.00 per year. The per year fee will be adjusted up or down at the end of the initial five year period and at the end of each successive five year period based on Lessor's estimated costs of monitoring. Payment for each year's fee shall be made by January 1 of that year.

10. RENT/USE FEE:

Lessee shall pay the sum of *[lease fee will be determined by appraisal prior to commencement of lease]* and other good and valuable consideration to Lessor in hand paid for Lessee's use of the Premises for its mining operations, the receipt of which is hereby acknowledged.

11. LESSEE SERVICES AND REQUIREMENTS:

Lessee shall furnish the following services and abide by these conditions at its' own expense:

- a. Lessee shall replace to the satisfaction of Lessor, the portion of the State snowmobile trail(s) which will be closed or their use affected by development and use of the Premises and access routes including county roads.
- b. Lessee shall meet or exceed the groundwater, surface water and air quality monitoring requirements of State and Federal Permits.
- c. Lessee's clearing and use of the Premises at and near the rock outcrop shall be restricted to the approved use contained in the DEQ Mining Permit and the Mining and Reclamation Plan.
- d. Lessee will secure, maintain and keep the Premises in good repair.
- e. Lessee will pay for all public utilities used including electric service and telecommunications service. Such utility service may require separate easement approval by the Lessor.
- f. Lessee is responsible for snow removal on the Premises as well as maintenance of the designated access road.
- f. Lessee shall, dispose of all garbage and debris from the Premises in conformity with applicable rules and law. Lessee shall at all times keep the Premises in a clean and sanitary condition and in conformity with standards, rules and law for sanitation and public health.

Lessee shall maintain standards of cleanliness that will reflect favorable public opinion on the Lessee and the DNR. If the Lessor's Representative determines that Lessee has failed to maintain an acceptable standard of cleanliness and if after five (5) working days, following verbal and written notification by Lessor, the problem is not rectified to the satisfaction of Lessor, Lessor may perform or have the duties of Lessee performed by others. Lessee shall pay 120 percent of the cost of such work, whether performed by the Lessor or by others at the discretion of Lessor. Situations caused by emergencies that deter Lessee from immediate (five days) correction shall be reported to the Lessor's Representative and appropriate regulatory agencies and shall be excluded from notice and cure provisions of this clause.

12. ASSIGNMENT:

Lessee may not assign, this Lease without Lessor's prior written consent, which consent shall not be unreasonably withheld, delayed or denied. Lessee shall request Lessor's prior written consent at least sixty(60) days in advance of such an assignment. With Lessor's prior written consent, an assignment shall be effective to transfer the following: (1) Lessee's rights under the lease; (2) Lessee's obligations under the lease only insofar as such obligations relate to use of the premises after the effective date of assignment; and (3) any risk of loss associated with use of the premises after the effective date of assignment. The request for Lessor's consent shall include the assignee's bond in place of the bond required under Paragraph 21 of the lease. An assignment granted without the written consent required by this paragraph shall be null and void.

13. MINING OPERATIONS FACILITIES SITE PLAN:

The attached Exhibit C is the Mining Operations Facilities Site Plan (Site Plan) as of Lease inception date. A new Site Plan showing any proposed improvements must be submitted to the Lessor's Representative at least thirty (30) days prior to the expected installation date. Lessee shall provide to the Lessor's Representative a detailed final Site Plan showing the location of all installations and structures placed on the Premises upon completion of construction and installation activities.

14. COMPLETION/ABANDONMENT:

Within ninety (90) days of the lease term, completion of the mining operation, abandonment by Lessee, or upon Lease cancellation, Lessee shall begin removal of all installations on the Premises. This shall include removal and proper disposal of all buildings, waste, waste rock, contaminated soils, groundwater or other materials, buildings and equipment and restore the Premises according to the approved Mining and Reclamation Plan. Lessee shall then grade the site to its approximate original contour, seed, mulch and fertilize exposed soil areas as specified in Exhibit B.

15. LAWS, CODES AND PERMITS:

All applicable laws and rules and permits are made a part and condition of this Lease. Violations of any of the applicable laws and rules and permits shall be considered a violation of the terms and conditions of this Lease and Lessor, at its sole discretion, may invoke all or any combination thereof. No rules made after the approval of this Lease shall operate to affect the term of the Lease or rental rate unless agreed to by both Lessor and Lessee.

16. DAMAGE AND REPAIRS:

Lessee shall reimburse Lessor for any repairs or remediation work on the Premises resulting from damage to the Premises caused by Lessee including but not limited to damages to the environment or natural resources as defined in Section 20101 (1) (k) of 1994 PA 451, as amended, MCL 324.20101 (k).

17. INSPECTION OF PREMISES:

Lessor and Lessor's agents and employees shall have the right at all reasonable times during the term of this Lease, and any renewal thereof, to enter the Premises for the purposes of making any inspections and repairs, as may be deemed appropriate by Lessor for the preservation of the Premises.

18. INDEMNIFICATION:

Lessee hereby expressly agrees to hold harmless, defend, and indemnify Lessor, its agents and employees, from and against any and all claims, costs, losses, suits, demands, actions, liabilities, damages, causes of action or judgments, including, but not limited to, alleged violations of environmental laws, that may in any manner be imposed on or incurred by the Lessor, its agents and employees, for any bodily injury, loss of life, and/or damage to property, resulting from, arising out of, or in any way connected with Lessee's use of the Premises. This indemnification and hold harmless provision shall survive the termination of the leasehold interest and the sale of the Premises by Lessor.

19. INSURANCE:

Lessee shall provide to Lessor certificates of insurance listing the State of Michigan, its several departments, boards, agencies, commissions, officers, and employees as additional insured's, within thirty (30) calendar days following the execution and delivery of this Lease to Lessee, and every year thereafter, for the following insurance coverage. The insurance policies shall provide that they may not be modified, canceled, or allowed to expire without thirty (30) days prior written notice given to Lessor.

- a. Lessee shall obtain general liability insurance, naming Lessor, its officers and employees as additional insured's and protecting against all claims, demands, suits, actions or causes of action and judgments, settlements or recoveries, for bodily injury or property damage arising out of a condition of the Premises, or

arising in connection with or as a direct or indirect result of the Lessee's use and occupancy of the Premises or its exercise of the right and privileges granted in the Lease. Lessee agrees to maintain a minimum policy limit, in the amount of **\$5,000,000.00** per occurrence for property damage, **\$2,000,000.00** per occurrence for bodily injury, and **\$10,000,000.00** aggregate.

- b. Lessee shall obtain workers' compensation insurance for Lessee Employers' claims under Michigan Workers' Compensation Act or similar employee benefit act or any other State act applicable to an employee, along with Employer's Liability Insurance for claims for damages because of bodily injury, occupational sickness or disease or death of an employee when workers' compensation may not be an exclusive remedy, subject to a limit of liability of not less than \$500,000 each accident.
- c. Lessee shall maintain automobile no-fault coverage as required by law.
- d. Lessee shall maintain Pollution Liability insurance covering pollution incidents that result in bodily injury or property damage, subject to a limit of liability of not less than **\$5,000,000.00**.

20. ACCIDENTS OR PROPERTY DAMAGE:

Lessee shall report verbally and in writing to the Lessor's Representative, all accidents that result in personal injury or damage to the Premises or adjacent land. Lessee shall make verbal notification within 24 (twenty four) hours and a complete written report to the Lessor's Representative within 7 (seven) days of any such incident. Incidents resulting in serious personal injury, death, or damage to the Premises or adjacent land are to be reported to the Lessor's Representative immediately by telephone or in person. A written report is to follow as described above. Lessee shall also provide to the Lessor all reports regarding damage to the Premises or adjacent land required by the DEQ.

21. PERFORMANCE BOND:

As a guarantee of faithful performance of the conditions of this Lease, Lessee delivers herewith a new cash or surety bond or letter of credit in the sum of **\$1,000,000.00**. As soon as security for the performance of the terms of this Lease or the settlement of claims incident thereto is no longer necessary, deposits in lieu of surety or cash bond will, subject to the conditions set forth in the sentence immediately following, be returned to Lessee. Lessee agrees that all monies deposited under this Lease may, upon failure on Lessee's part to fulfill all and singular the requirements herein set forth or made a part hereof, be retained by the State of Michigan to be applied as far as may be to the satisfaction of Lessee's obligations assumed hereunder, without prejudice whatever to any rights and remedies of the State of Michigan.

22. NONDISCRIMINATION:

Lessee shall comply with the Elliott-Larsen Civil Rights Act, 1976 PA 453 as amended, MCL 37.2101 et seq.; MSA 3.548 (101) et seq.; the Persons with Disabilities Civil Rights Act, 1976 PA 220, as amended, MCL 37.1101; MSA 3.550 (101) et seq., and all other Federal, State and Local fair employment practices and equal opportunity laws and covenants that it shall not discriminate against any employee or applicant for employment, to be employed in the performance of this Lease, with respect to his or her hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment, because of his or her race, religion, color, national origin, age, sex, height, weight, marital status, or physical or mental disability that is unrelated to the individual's ability to perform the duties of a particular job or position. Lessee agrees to include in every subcontract entered into for the performance of this Lease this covenant not to discriminate in employment. A breach of this covenant is a material breach of this Lease.

23. UNFAIR LABOR PRACTICES:

Lessee shall comply with the Employers Engaging in Unfair Labor Practices Act, 1980 PA 278, as amended, MCL 423.321 et seq.; MSA 17.458(21) et seq.

24. CANCELLATION:

Lessor may cancel this Lease provided Lessee is notified in writing at least thirty (60) days prior to the effective date of cancellation and any one of the following occur:

- a. Lessor determines that the Premises are no longer being used for the Purposes identified in this Lease.
- b. Lessor determines that Lessee provided Lessor with information, in its application for this Lease or at any time during the Lease term, that was false or fraudulent.
- c. Lessee fails to perform any of its obligations under this Lease, and such failure is not cured within thirty (60) calendar days after written notice of default to Lessee.
- d. Lessee or any subcontractor, manufacturer, or supplier, of Lessee appears in the register compiled by the Michigan Department of Consumer and Industry Services pursuant to 1980 PA 278, as amended, MCL 423.321 et seq.; MSA 17.458(21) et seq. (Employers Engaging in Unfair Labor Practices Act).
- e. Lessee or any subcontractor, manufacturer or supplier of Lessee is found guilty of discrimination, pursuant to 1976 PA 453, as amended, MCL 37.2101 et seq.; MSA 3.548(101) et seq. (Elliott-Larsen Civil Rights Act); or 1976 PA 220, as amended, MCL 37.1101 et seq.; MSA 3.550(101) et seq. (Persons with Disabilities Civil Rights Act).

25. LESSEE RIGHTS:

Upon payment of the rent and the performance of the conditions outlined herein, Lessee may use the Premises as provided in Paragraph 4, provided that the use of the Premises by Lessee shall at no time unreasonably interfere with the operations or use of the Lessor or the Public on the State lands adjoining the Premises.

26. RESERVATION:

Lessor reserves the right to grant rights-of-way and easements of any kind and nature over and across the Premises and to grant or exercise all other rights and privileges of every kind and nature not herein specifically granted so long as granting of such rights does not interfere with Lessee's use of the Premises as described in Paragraph 4.

28. TAXES:

If Lessee is a nongovernmental entity, it may be subject to taxation for the Premises as provided in 1953 PA 189, as amended, MCL 211.181 et seq.; MSA 7.7(5) et seq.

Lessee's failure to notify the taxing authority of this Lease or its failure to pay its pro rata share of real property taxes by the first due date shall be a breach of the Lease. Lessee shall have ninety (90) days to cure any failure for payment of property taxes prior to being in default of this lease. Lessee shall, upon request, provide Lessor with paid receipts for any real property taxes.

NOTICE AND APPROVALS

29. NOTICES:

Any notices to Lessor or to Lessee required by this Lease shall be complete if submitted in writing and transmitted by personal delivery (with signed delivery receipt), or certified or registered mail return receipt requested. Unless either party notifies the other in writing of a different mailing address, notices to Lessor and Lessee shall be transmitted to the addresses listed below:

To Lessor:

State of Michigan
Department of Natural Resources
Forest, Mineral and Fire Management
P.O. Box 30452

Lansing, Michigan 48909-7952

To Lessee:

30. NOTICE EFFECTIVE TIME AND DATE:

Notices shall be deemed effective as of 12:00 noon Eastern Standard Time on the third business day following the date of mailing, if sent by mail. Business day is defined as any day other than a Saturday, Sunday, legal holiday or day preceding a legal holiday. A receipt from a U.S. Postal Service, or comparable agency performing such function, shall be conclusive evidence of the date of mailing.

31. INTERPRETATION:

This Lease shall be interpreted in accordance with the laws of the State of Michigan.

32. NO UNNAMED PARTNERS:

Lessee covenants that there are no unnamed partners having authority over the operation or management of the Premises and further represents that Lessee is the only entity responsible for carrying out Lessee's responsibilities.

33. LESSEE'S INDEPENDENT STATUS:

Lessee covenants that its officers, employees or agents, are not employees of the State of Michigan. Lessor and Lessee agree that the Lessee shall have a leasehold interest only on the Premises and that Lessee will have no title lien or any reversionary interest in the Premises or in any property belonging to Lessor surrounding or adjacent to the Premises.

34. CONTRACTS:

Lessee may execute contracts or agreements as the operator of the business authorized under the terms of this Lease. The contracts or agreements must not obligate Lessor or conflict with the terms of the Lease. Lessee shall indemnify, defend, and exculpate Lessor from any liability that may accrue or be asserted against the Department or the State of Michigan under such contracts or agreements.

35. REQUIRED APPROVALS:

This Lease shall not be binding or effective on either party until executed (and witnessed and notarized as necessary) by Lessor and Lessee.

36. SEVERABILITY:

Should any provision of this Lease or any addenda thereto be found to be illegal or otherwise unenforceable by a court of law, such provision shall be severed from the remainder of the Lease, and such action shall not affect the enforceability of the remaining provisions of the Lease.

37. NON-ENFORCEMENT:

The decision of Lessor not to enforce, in any one or more instances, the performance of any term of this Lease may not be construed as a waiver or relinquishment of Lessor's right to the future performance of the term. Lessee's obligations to comply with all terms of the Lease remain in full force and effect.

38. ENTIRE AGREEMENT AND EXHIBITS:

This Lease, with the Exhibits listed below, constitutes the entire agreement between Lessor and Lessee with regard to this transaction and may be amended only in writing and executed in the same manner as this Lease was originally executed.

Exhibit A – Survey of Premises

Exhibit B – Vegetation Restoration Requirements

Exhibit C – METALLIC MINERALS MINING OPERATION FACILITIES Site Development Plan

The said Lessor, by its DIRECTOR, has signed and affixed the seal of the State of Michigan by virtue of action taken by Lessor on _____, 20____, and Lessee has signed and affixed its seal the day and year written below.

ACKNOWLEDGEMENT BY LESSOR

NATURAL RESOURCES DIRECTOR FOR
THE STATE OF MICHIGAN

By: _____
Rebecca A. Humphries, Director

STATE OF MICHIGAN)
) §.
County of Ingham)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by Rebecca A. Humphries, Director, Department of Natural Resources.

PREPARED BY:
Forest, Mineral and Fire Management
MICHIGAN DEPARTMENT OF NATURAL RESOURCES
PO BOX 30452
LANSING, MI 48909-7952

_____, Notary Public
State of Michigan, County of _____
My Commission Expires: _____

ACKNOWLEDGEMENT BY LESSEE

LESSEE:

By: _____

STATE OF)
) §.
County of)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____,
by _____.

My Commission Expires:

Notary Public, _____ County
Acting in _____ County

